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DIRECTOR

STATE OF MARYLAND
GOVERNOR'S COMMISSION TO REVISE
THE ANNOTATED CODE
SUITE 301, EXECUTIVE BUILDING
140 MAIN STREET
ANNAPOLIS, MARYLAND 21404
TELEPHONE: 267-5989

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COMMISSION REPORT NO. 3C

TO THE LEGISLATIVE COUNCIL

TITLE 1 - COURTS AND JUDICIAL PROCEEDINGS ARTICLE

Attached to this report is the 9/28/72 Commission redraft of Title 1 of the proposed Courts Article. The title is designated "Court Structure and Organization." This title is intended to collect existing statutes dealing with general powers of the courts, their composition and administration, and the compensation of judges. Other titles (3 and 4) of the Article will deal with specific grants of subject-matter jurisdiction. The Orphans' Courts, the Tax Court, and other administrative agencies, however named, are not covered in Title 1.

Title 1 contains the following seven subtitles:

1. Definitions
2. General
3. Court of Appeals
4. Court of Special Appeals
5. Trial Courts of General Jurisdiction
6. District Court
7. Judicial Salaries and Allowances.

In addition to the detailed comments in the Revisor's Notes, the following matters are worthy of special consideration.

Subtitle 1 - Definitions.

As in other titles, the definitions are intended to cut down on duplicative language. Section 1-101(b) avoids the necessity to frequent references to the component courts of the Supreme Bench of Baltimore City. Section 1-101(c) permits the use of the term "court" in a comprehensive sense. Sections 1-101(c) and (d) both make it clear that Orphans' Courts, the Tax Court, and any local Tax Appeal Courts are not covered by the title.

Subtitle 2 - General.

Section 1-201 (pp. 2-3). This section consolidates and restates Article 26, Sections 1, 25, and 27, in a manner consistent with the Constitution, case law, and existing rules.

The portion of Section 27 dealing with Orphans' Courts will be transferred to Article 93.

Section 1-202 (pp. 6-9). Subsection (a) rewrites Article 26, Section 4. Although the change may appear to be substantive, the Commission does not believe so.

Article 26, Section 4 purports to place strict limitations on the power of a court to inflict summary punishment for contempt. The problem is that the statute is highly misleading, since the Court of Appeals and the Court of Special Appeals have consistently held that this power is inherent in a court, and may not be constitutionally limited by the legislature. Thus, Section 4 does not state the law accurately. The commission's draft recognizes the situation as set forth in the cases and simply refers to the procedural provisions now contained in Subtitle P of the Maryland Rules and the Maryland District Rules.

Section 1-203 (pp. 9-11). It is generally recognized that a judge should not practice law. This is generally provided in Canons of Judicial Ethics; see, e.g. Canon 5.F of the Code of Judicial Conduct adopted by the American Bar Association in 1972, and Canon XXX as embodied in Maryland Rule 1231.

Article 10, Section 29 generally prohibits in-court practice by a judge. Article 26, Section 144(b) contains a much broader prohibition applicable to District Court judges. The commission thought the broader prohibition should apply to all judges (as defined in Section 1-101(d)). While this may be a technical change in substantive law, it appears completely consistent with generally-accepted views and normal practice.

However, the last phrase of the Article 26 language, as set forth in Section 1-203(a), ("nor may he profit directly or indirectly from the practice of law") raises difficult questions. A lawyer who leaves a profitable practice for the bench may have "earned" a substantial interest in fees to be collected by his firm or his successor in practice. If he is paid this earned amount after he becomes a judge, is he profiting directly or indirectly from the practice of law?

Of course, the legislature could insist that the judge-designate forego any such earnings. Or it could force him to take a lump-sum payment before going on the bench. However, the former approach could be financially hard on the judge, and the latter would impose financial difficulties on the law firm and an extremely adverse tax impact on the judge. In either case, the effect would be to discourage able persons from accepting judgeships.

Thus, the commission drafted subsection (b), which would permit a payment in installments, provided the liquidation agreement was made before the judge qualified for office, and provided the installment

period was reasonable. Since such payments would have to be reported to the Commission on Judicial Disabilities and the Judicial Ethics Committee (Ethics Rule 7, Md. Rule 1231), each liquidation arrangement would be subject to some review.

The commission's proposal states in general terms the actual practice which has frequently been followed in Maryland and elsewhere.

Section 1-204 (p. 12). Present law permits an appellate court judge to retain his residence in his appellate judicial circuit even though he in fact lives in Annapolis or its vicinity. "Vicinity" is a vague term. The commission proposes substituting "Anne Arundel County", thus making the law certain and easy to apply.

Article 26, Section 3 (p. 13). The commission proposes repeal of this section dealing with suits in privilege. A person "in privilege" is one who appears before a court as litigant, witness, juror, or otherwise. The prohibition of a suit against a person in privilege is at least partially covered by Md. Rule 104. The prohibition of a suit by a person in privilege seems unnecessary.

Article 26, Sec. 17 (p. 14). This section of the present Code requires judges to inspect clerk's records at every term of court. If the records have become dilapidated, the judges are to direct the clerks to replace the worn records. The section has not been implemented for years. The clerks themselves replace worn records, as they are required to do by Article 17, Sec. 1. Since judges in any event have visitorial power over clerks under Article IV, Sec. 10 of the Constitution, Sec. 17 is proposed for repeal. Its portions dealing with the legal status of replacement records will be transferred to Title 9 of the Courts Article, dealing with Evidence.

Article 26, Sec. 23 (pp. 15-16). Since this section, dealing with disqualification because of consanguinity, is fully covered by rule (in fact, the rules are broader than the statute; Md. Rule 18.a, Ethical Rule 1 in Md. Rule 1231) the section's repeal is proposed.

Subtitle 3 - Court of Appeals (p. 15). Other than provisions dealing with rule-making, which are handled in subtitle 1, there is virtually no present statutory material dealing with the structure and organization of the Court of Appeals. This material is entirely Constitutional. Section 1-301 is inserted mainly to preserve a place for future legislation, and to provide a location for cross-references. Article 16, Section 99, another rule-making statute, is proposed for repeal.

Subtitle 4 - Court of Special Appeals (pp. 17-20). This subtitle is merely a reworking of Art. 26, Sec. 130. In Section 1-403(c), (p. 19) a clarification is attempted with respect to in banc hearings. Art. 26, Sec. 130 provides that "a majority of the entire Court" is necessary for decisions in such a case. It is not clear whether this means a majority of the full authorized number of judges or a majority of the judges actually in office when the hearing is held. The commission has written the latter interpretation into Section 1-403(c), as a matter of practical administrative convenience.

Article 26, Sec. 131, which now sets forth authority the legislature already has under the Constitution, or restrictions embodied in the Constitution, is proposed for repeal.

Subtitle 5, - Trial Courts of General Jurisdiction.

Section 1-503 (pp. 23-24). As examination of the present statutes providing for trial court judgeships will show (pp. 24-27) it is not always easy to determine, under present law, how many judgeships are authorized for a given county or circuit. Section 1-503 proposes to

rectify this situation by adopting a simple, tabular form. The number of judgeships are those authorized by the Constitution and by statute as of July 1, 1972. No change in numbers is included.

Subtitle 6 - District Court (p. 28). This subtitle includes organizational and structural provisions of Article 26, Section 139ff, dealing with the District Court. The changes are mainly stylistic.

Section 1-605 (pp. 33-35). In this section, there is an attempt to collect all the major provisions dealing with the authority of the chief judge. Even though this involves some repetition of Constitutional material, the approach is thought to be a convenient one. The source for each part of the section is listed in the Revisor's Note on p. 36.

Other provisions of the present District Court law will appear in Title 2 (Court officers), Title 4 (Jurisdiction), Title 6 (Venue), Title 7 (Costs), etc.

Subtitle 7 - Judicial Salaries and Allowances. (p. 40).

Section 1-701 (p. 40). While it is likely that the Constitution prohibits decrease in a judge's salary while he is in office, the matter is not totally free from doubt, at least with respect to judges of the Court of Special Appeals. Hence this section is proposed. Similar language, applicable to the Court of Special Appeals, appears in Article 26, Section 130.

Sections 1-702 - 1-704 (pp. 40-43), reflect the substance of Article 26, Section 47(a), as enacted by Ch. 343, 1972, except Section 1-702(b) is based on a part of Article 26, Sec. 144(a). This provision, specifying the salary level of the chief judge of the District Court, was not set forth in Ch. 343. However, it is presumed that it is a statement of legislative policy which should be retained for the guidance of budget-makers.

Section 1-705 (pp. 43-44) retains the present prohibition against the local supplementation of judicial salaries; see Article 26, Sec. 47(b). Section 1-705(a) makes it clear that properly reimbursable expenses, pension supplementation permitted by public general law, and certain health plan payments permitted District Court judges under Article 26, Sec. 144(f) are not barred.

Section 1-706 (pp. 44-46) restates the policy regarding reimbursement of expenses contained in Article 26, Sec. 47(d), as enacted by Ch. 343, 1972. However, the language is based on Article 26, Sec. 144(a), now applicable to judges of the District Court, but made State-wide by virtue of Section 1-706.

The draft writes into law reimbursement rules generally similar to those applicable to other State employees.

Section 1-707 (p. 47). This section preserves certain local health plan rights appertaining to certain District Court judges who were formerly judges of other courts of limited jurisdiction; see Article 26, Sec. 144(f).

Judicial Pensions (p. 48). Initially, the commission intended to include in Subtitle 7 laws dealing with judicial pensions. However, some efforts at substantive change in this complex field are underway. Also the commission concluded that a better allocation of the material would be to Article 73B "Pensions". This action will postpone formal revision of the pension laws until some later date, by which time substantive changes may have clarified and improved them.

Accordingly, it is proposed that Article 26, Sections 49, 49A, 49B, 50, 50C, 125, 125A, 144(c), 144(d), 144(e) and 160 be made a separate subtitle of Article 73B, and that Article 26, Sections 50A and 50B be repealed. Section 50A is obsolete and Section 50B has, in fact, been

repealed by its own terms.

A handwritten signature in dark ink, appearing to read 'W. H. Adkins, II', with a long horizontal flourish extending to the right.

William H. Adkins, II
Director

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